

- (1) The Appeals Board has jurisdiction to review this preliminary hearing order under K.S.A. 44-534a.
- (2) The Preliminary Hearing Order should be affirmed. Although claimant is unsure of the actual date of accident, he testified he experienced a back injury on March 29, 1995 while working under a machine, that witnesses were present and that he immediately notified his lead man requesting medical care. Respondent presented the testimony of the lead man, Mr. Bob Rardin, to controvert those statements. Claimant introduced the medical records of Christopher W. Siwek, M.D., who apparently saw claimant on June 19, 1995. This was the first treatment for the back injury claimant received. The June 19, 1995 office notes state claimant sustained an accidental injury at work on March 19, 1995.

The Administrative Law Judge had to find claimant a credible witness and accept his version of the accident. The Administrative Law Judge had the opportunity to observe both witnesses testify and assess their demeanor. In this instance, the Appeals Board defers to the **trial judge's** opinion as to the witnesses' credibility. Therefore, the Appeals Board finds for preliminary hearing purposes it is more probably true than not that claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent and that he reported the injury to an individual designated for such purpose on that same day.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark dated August 25, 1995 should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James B. Zongker, Wichita, KS
Eric K. Kuhn, Wichita, KS
Joel Hesse, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director